IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9244 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

POKHREL CHETNARAYAN DURGATT

Versus

GUJARAT SECONDARY EDUCATION BOARD

Appearance:

MR YATIN SONI for Petitioner No. 1

MR AD OZA for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 01/11/2001

ORAL JUDGEMENT

Heard the learned advocates. Certified copy of the police report is ordered to be taken on record.

The petitioner before this Court is a student who had taken Standard-XII examination given by the Gujarat

Secondary Education Board, the respondent herein [hereinafter referred to as, `the Board'] in the month of April, 2001. The petitioner had written six papers, however, remained absent at the examination in the subject of Indian Culture. On 8th April, 2001, the Invigilator lodged a complaint before the learned Metropolitan Magistrate, Ahmedabad [Court No. 12] to the effect that the petitioner on 7th April, 2001 after writing examination in the subject of `Organization of Commerce', did not handover the answersheet to the Invigilator and instead carried the answersheet alongwith him out of the Examination Hall.

Pursuant to the said complaint, investigation was made by the Police Inspector, Gaekwad Havelli Police Station and report was submitted to the learned Metropolitan Magistrate calling for `B' Summary with prosecution. Pursuant to the complaint made by the Invigilator, the Board also initiated action against the petitioner for committing irregularity at the examination by issuing a show cause notice on 1st May, 2001. The petitioner was informed to remain present before the Examination Committee on 6th May, 2001. The petitioner failed to remain present before the Committee on 6th May, 2001. A reminder was sent on 13th May, 2001 informing the petitioner to remain present before the Committee on 19th May, 2001. On 19th May, 2001 also, the petitioner did not remain present before the Committee. Pursuant to the said complaint, the Board made an order on 9th June, 2001 imposing penalty upon the petitioner for the aforesaid irregularity. Under the said order, the result of the petitioner for the said examination is ordered to be cancelled and the petitioner is debarred from taking any examination till the month of March, 2003. Feeling aggrieved, the petitioner has preferred the present petition.

The petitioner has submitted that petitioner had not taken the answersheet in question alongwith him but had submitted it to the Invigilator after the examination was over and before he left the examination hall. He has further submitted that he could not remain present before the Examination Committee since he was not present in India i.e, on account of the death of his sister he had left India for Kathmandu-Nepal on 23rd April, 2001 and he returned on 1st June, 2001. Copies of the tickets issued to the petitioner are annexed to the petition.

Pursuant to the police complaint lodged by the Invigilator-one Shri Deraiya Razakbhai Hassanbhai, the police had made investigation as aforesaid and the

concerned Police Inspector had submitted his report to the learned Metropolitan Magistrate on 18th April, 2001. As stated in the report, the Police Officer has opined that the other students particularly one Kamleshkumar Shivshankar Swami had seen the petitioner handing over the answersheet in question to the Invigilator; the complainant had made some interpolation in the sheet maintained by him; the number of answersheets received by him were initially recorded as 29 and was later on interpolated by the figure 28. Similar interpolation was made in the list of supplementaries, no loss of answersheet was noticed when the answersheets were handed over to the Head Clerk of the School; in the register maintained by the Head Clerk, the number of answersheets and the supplementaries were recorded as 29 and 30, as initially recorded by the Invigilator but later on interpolated. The police has also opined that the complainant was, on account of his personal problems, suffering from tension and had probably inadvertently misplaced the answersheet. Considering the evidence recorded by the police, it is evident that the petitioner did not commit any irregularity, as alleged. The petitioner had to leave the country for compelling reasons for which he could not remain present before the Examination Committee and produce the above referred report made by the police.

I am, therefore, of the view that there was no occasion to impose punishment upon the petitioner, as has been done under the impugned order. The petition is allowed. The impugned order dated 9th June, 2001 [Annexure-F to the petition] is quashed and set-aside. The result of XIIth standard examination of the petitioner be declared within fifteen days from today. Rule is made absolute. There shall be no order as to costs.

[Ms. R.M Doshit, J.]

Prakash*